

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REVIEW OF AN AGREEMENT)	
BETWEEN GTE SOUTH INCORPORATED)	CASE NO. 99-347
AND BLUESTAR NETWORKS, INC.)	
PURSUANT TO 47 U.S.C. 252(i))	

O R D E R

On August 13, 1999, GTE South Incorporated ("GTE") and BlueStar Networks, Inc. ("BlueStar") submitted to the Commission their negotiated agreement for the interconnection of their networks. BlueStar is purporting to adopt the interconnection agreement between GTE and AT&T Communications of the South Central States, Inc., which was approved by the Commission in Case No. 96-478.¹ On October 25, 1999, GTE and BlueStar submitted a supplemental negotiated agreement regarding collocation. The letter, which appears to comprise the only document memorializing the parties' principal agreement, and the supplement, were negotiated pursuant to the Telecommunications Act of 1996 (1996 Act), 47 U.S.C. Sections 251 and 252. Section 252(e) of the 1996 Act requires the parties to an interconnection agreement adopted by negotiation to submit the agreement for approval to the Commission.

¹ Case No. 96-478, Petition by AT&T Communications of the South Central States, Inc. for Arbitration of Certain Terms and Conditions of a Proposed Agreement With GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996. (Order dated July 30, 1999).

The Commission has reviewed the adoption letter and the supplement and finds that no portion thereof discriminates against a telecommunications carrier not a party to the agreement. The Commission is somewhat hesitant, however, to find that the implementation of the agreement and collocation agreement is consistent with the public interest, convenience, and necessity without affording BlueStar an opportunity to adopt the AT&T agreement in its entirety.

In the agreement filed by GTE, BlueStar has agreed to "not seek UNE platforms or already bundled combinations of UNEs."² The document also contains GTE's legal conclusions regarding its alleged, lawful right to withhold access that is required by law. Its legal analysis is erroneous. However, as this matter represents the voluntary negotiations between the parties, the Commission will approve the agreement. BlueStar should be aware that GTE has been ordered by this Commission to provide when requested the combined UNE platform where the platform already exists in GTE's network.³ 47 U.S.C. 251, the Federal Communications Commission ("FCC") rules, the United States Supreme Court, and this Commission require UNEs to be furnished. Moreover, the Supreme Court specifically upheld the FCC rule prohibiting an incumbent local exchange carrier ("ILEC") from breaking apart UNEs when they are ordered by a competing local exchange carrier ("CLEC") in combination.⁴ The Commission has consistently reiterated its determination that UNEs are central to providing local exchange service and must be provided by ILECs to CLECs in the manner requested.

² August 13, 1999 adoption letter at 2.

³ Case No. 96-478, *supra*, (Order dated May 13, 1999).

⁴ AT&T Corp. v. Iowa Utilities Board, 119 S.Ct. 721 (1999); 47 CFR 315(b).

In addition to the references from Case No. 96-478 discussed herein, the Commission has consistently ruled in other proceedings pursuant to the Telecommunications Act of 1996.⁵

BlueStar must comply with all relevant Commission mandates for serving in this Commonwealth.

The Commission, having been otherwise sufficiently advised, HEREBY ORDERS that:

1. Subject to BlueStar's notification to the Commission within 10 days of the date of this Order that it desires to exercise its legal right to revoke this agreement and adopt the entire AT&T agreement, this agreement and the collocation agreement negotiated between GTE and BlueStar are approved.

2. BlueStar shall file a tariff for local service prior to providing local service giving 30 days' notice to the Commission and shall comply with all Commission regulations and orders as directed.

⁵ See Petition by MCI for Arbitration of Certain Terms and Conditions of a Proposed Agreement with GTE South Incorporated Concerning Interconnection and Resale Under the Telecommunications Act of 1996, Case No. 96-440, Order dated September 1, 1998, at 17 (requiring GTE to permit MCI to order UNEs in combination and stating, "[t]he Commission will not tolerate an ILEC's literally breaking apart network elements that are physically connected in the manner requested by a CLEC"). See also Investigation Regarding Compliance of the State of Generally Available Terms of BellSouth Telecommunications, Inc. With Section 251 and Section 252(d) of the Telecommunications Act of 1996, Case No. 98-348, Order dated August 21, 1998, at 8 (finding "unacceptable" a proposed provision that BellSouth would separate combined elements when a CLEC ordered them in combination and finding that "[s]uch separation and subsequent recombination would serve no public purpose and would increase costs that ultimately would be passed on to the consumer").

Done at Frankfort, Kentucky, this 8th day of November, 1999.

By the Commission

ATTEST:

Executive Director